

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

# **FREEDOM FROM RELIGION FOUNDATION, INC.**

**Plaintiff,**

-VS-

**GOVERNOR GREG ABBOTT, in his official and individual capacities, and JOHN SNEED, Executive Director of the Texas State Preservation Board, in his official and individual capacities, Defendants.**

## Defendants.

**CASE NO. 1:16-CV-00233-SS**

**PLAINTIFF'S OPPOSED MOTION TO AMEND SCHEDULING ORDER**

Plaintiff Freedom from Religion Foundation, Inc. (“FFRF”) hereby files this Opposed Motion to Amend Scheduling Order (the “Motion”).

## I. INTRODUCTION

1. This Court entered its Scheduling Order [Dkt. #39] on December 28, 2016 setting the case for trial during the month of October, 2018. Pursuant to that order, the deadline for filing amended or supplemental pleadings and to join additional parties (the “Pleadings Deadline”) is April 27, 2017, and the deadline for completion of discovery (the “Discovery Cutoff”) is May 26, 2017. FFRF seeks to extend the Pleadings Deadline and Discovery Cutoff dates by sixty days to June 27, 2016 and July 25, 2016, respectively.

## II. BRIEF FACTUAL BACKGROUND

2. FFRF concluded that its primary need for discovery before the Discovery Cutoff was an oral deposition of the Defendants, and began seeking agreeable dates well in advance of that deadline. Defendants have this far refused to accommodate that reasonable request, and FFRF is being required to enlist the Court's assistance in procuring those depositions, a process

which cannot be concluded without extending the initial deadlines set forth in the Scheduling Order. Highlights of these efforts are below:

- March 27, 2017: FFRF requested dates for the depositions of Abbott and Sneed.
- April 3, 2017: Defendants' counsel promises a substantive response on available dates after she consults with Defendants.
- April 6, 2017: After being prompted again, Defendants' counsel argues that Abbott and Sneed are not be subject to being deposed because they were high-ranking government officials. That same day, FFRF's counsel urged Defendants to reconsider based on Sneed's and Abbott's personal involvement in the events underlying this dispute. Defendants do not respond.
- April 10, 2017: FFRF issues notices for the depositions of Sneed and Abbott to occur on April 24 and 25, 2017, respectively.
- April 13, 2017: Defendants' counsel alleges for the first time that Abbott did not play a role in either deciding to remove the display or drafting and signing his letter, but rather claims that those actions were taken by unnamed members of his staff. Instead of identifying those staff members, Defendants' counsel indicated they would only reveal this information through formal written discovery.<sup>1</sup>
- April 14, 2017: FFRF confirms its intent to go forward with the Sneed and Abbott depositions and requests information regarding Abbott's supposed ghost writer.
- April 17, 2017: Defendants' counsel confirms that they will file motions seeking to prevent the depositions of Abbott and Sneed, and does so for Abbott that day. The purported ghost writer remains unidentified.
- April 18, 2017: Defendants' counsel complains that Sneed is a non-party for which a subpoena must be issued. FFRF issues a subpoena for Sneed to appear at his deposition.
- April 20, 2017: Sneed files a motion to quash the subpoena issued for his deposition.

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<sup>1</sup> Based on their answer in this action, FFRF is skeptical that Defendants would be forthcoming in response to written discovery. For example, Defendants stated that they lacked knowledge sufficient to form a belief about the truth of FFRF's allegations about a "tweet" authored by Abbott. *See* Defendants' Original Answer to First Amended Complaint [Dkt. 29], at ¶ 85. That paragraph alleged, "In a social media message, a December 22 "tweet," the Governor referred to FFRF's display as offensive and the Governor boasted that he had demanded removal of the FFRF display from the Capitol." First Amended Complaint [Dkt. 15], at ¶ 85.

### III. DISCUSSION

3. Good cause exists for the modest extensions requested by FFRF. The trial of this matter will be over a year after the requested extension of the Discovery Cutoff. There is no docket-related reason to compress the discovery process, and Defendants' actions have thwarted discovery efforts thus far.

4. FFRF has been diligent in its efforts to complete discovery prior to the expiration of the initial deadline, but its efforts have been resisted by Defendants. FFRF began requesting available deposition dates from Defendants in March, over sixty days before the initial Discovery Cutoff. Defendants seek to prevent these depositions from occurring at all, despite the intended deponents' intimate personal involvement in the underlying transactions and occurrences. Despite Abbott's signature on the letter ordering the display's removal and Sneed's actions to remove it, Defendants now claim that neither of them may be deposed, at least not until alternate discovery tools have been exhausted. Both Defendants have filed motions [Dkt. 41 & 42] asking this Court to first require FFRF to engage in other time-consuming discovery methods to determine if others have deeper knowledge of and are responsible for the actions at issue in this lawsuit. Defendants have also protracted the discovery process by insisting that the longer lead times necessary for deposing third parties be applied to Sneed one the grounds that he is no longer in office (while at the same time seeking to prevent his deposition from proceeding on the ground that he is entitled to protections as a high-ranking governmental official). Without that discovery, FFRF cannot determine whether it is necessary to amend its pleadings or add any parties. Whether intended or not, Defendants' actions will have the effects of allowing these deadlines to expire and preventing FFRF from obtaining the discovery to which it is entitled.

5. Defendants' dilatory tactics should not be rewarded by prematurely foreclosing discovery. To be afforded due process, FFRF must be allowed to fully discover Abbott's and

Sneed's knowledge of the events leading up to this dispute in the context of a deposition, as well as the identity of any other individuals that may have been involved. Barring further discovery obstructions, a sixty day extension of the Pleadings and Parties Deadline and the Discovery Cutoff should be sufficient to allow FFRF to fairly prepare for trial.

**IV. CERTIFICATE OF CONFERENCE**

6. Counsel for FFRF has conferred with counsel for Defendants who confirmed that Defendants are opposed to the relief requested by this motion.

**V. PRAYER FOR RELIEF**

Based on the foregoing, Plaintiff Freedom From Religion Foundation, Inc. requests this Court amend the Scheduling Order to extend the period to file all amended or supplemental pleadings and join additional parties from April 27, 2017 to June 26, 2017, and to extend the discovery period from May 26, 2017 to July 25, 2017.

WHEREFORE, Plaintiff Freedom From Religion Foundation, Inc. requests that the Court grant this motion to amend the Scheduling Order and grant FFRF such other and further relief to which it is justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF FREEDOM FROM RELIGION FOUNDATION, INC.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was filed electronically via the Court's CM/ECF system on this the 28<sup>th</sup> day of April, 2016, which will send notification to the following:

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